S.B. CIVIL WRIT PETITION NO.3402/2004
(M/s.Priyank Steels vs. Union of India & Ors.)

Date :: 28.05.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.Anjay Kothari, for the petitioner.
Mr.K.K. Bissa, for the respondents.

By way of filing present writ petition, the petitioner is challenging the notice dated 13th July, 2004 (Annexure-5) issued by the Assistant Commissioner of Income Tax, Circle-2, Udaipur in pursuance of the provisions of Section 158BC of the Income Tax Act, 1961, whereby the petitioner was directed to submit return for the block period as per Section 158BC (a) of the Act of 1961.

In this case, while issuing notice on 17th August, 2004, further proceedings in pursuance of Annexure-5 dated 13th July, 2004 were stayed for two weeks. Thereafter the said stay order was not extended by this Court.

Learned counsel for the petitioner has invited attention of this Court towards judgment of the Hon'ble Supreme Court in Manish Maheshwari Vs. Asst. Commissioner of Income-Tax & Anr., reported in [2007] 289 ITR 342 (SC) in which the Hon'ble Supreme Court

while considering the identical issue has held as under:-

> "As the Assessing Officer has not recorded his satisfaction, which is mandatory; nor has he transferred the case to the Assessing Officer having jurisdiction over the matter, we are of the opinion that the impugned judgments of the High Court cannot be sustained, which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

Learned counsel for the petitioner submits that his case is squarely covered with the judgment of Manish Maheshwari (supra) because no satisfaction was recorded while issuing notice Annexure-5 under Section 158BC of the Income Tax Act, 1961.

In reply to the contention raised by learned counsel for the petitioner, it is submitted that petitioner may raise his all objections before the authorities concerned, so also, he may apprise the authorities concerned with regard to the judgment of Manish Maheshwari (supra) and authorities may be given liberty to decide such objections.

In these facts and circumstances of the case, the writ petition is disposed of with liberty to the petitioner to raise his objections against the impugned notice dated 13th July, 2004 (Annexure-5) before Assistant Commissioner of Income Tax, Circle-2, Udaipur including objections with regard to not recording satisfaction at the time of issuance of notice under Section 158BC which is held to be

mandatory in nature. However, the petitioner may file his objections within a period of 15 days from receipt of certified copy of this order and may raise his objections before the Assessing Officer. Upon filing such objections, the Assistant Commissioner of Income Tax, Circle-2, Udiapur is directed to decide the preliminary objections first in the light of judgment of Manish Maheshwari (supra) within a period of two months. If any order will be passed by the Assistant Commissioner of Income Tax, Circle-2, Udiapur against the petitioner upon the objections raised by him, then petitioner will be free to carry the same.

(GOPAL KRISHAN VYAS), J.

A.K. Chouhan/-